

REMARKS

Claims 17, 38-41, 56-65 are pending in the application. Claims 39 and 40 are withdrawn from consideration. Claims 17, 38-41, 56-65 are rejected in this Office Action.

Claim 17 has been amended. Support for the amendment can be found on page 21, lines 7 - 11 (alpha olefin copolymer) and page 20, lines 15 - 16 (the wetting agent that are non-reactive transfer resistant film but at the same time capable of interacting).

Claims 38-41 and 56-65 depend from claim 17.

Rejection Under 35 U.S.C. §102(b)

Claims 17, 38-41, 56-65 are rejected under 35 U.S.C. §102(b) as being anticipated by Drechsler et. al. (US Pat. 6,074,654) ("Drechsler") as evidenced by STN Registry.

The Examiner states, "Drechsler discloses a lip color film-forming composition comprising crosslinked organosiloxane resins such as Wacker 803 from Wacker Silicones Corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col.7, line 46 - col.9, line 2. The reference also discloses a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63- col. 16, line 7. the reference also teaches in col. 2, lines 7-13 that it is well known in the art to formulate a transfer-resistant cosmetic composition with trimethylated silica and volatile solvent. The reference teaches using the film forming silicone resin in the amount ranging from 10 to 95%."

Applicant respectfully traverses the Examiner's rejection.

The allegedly invalidating reference must meet all the limitations of the claims. "[T]he court should determine "whether the subject of the barring activity met each of

the limitations of the claim, and thus was an embodiment of the claimed invention." *Dana Corp. v. Am. Axle & Mfg., Inc.*, 279 F.3d 1372, 1375-76, 61 U.S.P.Q.2d 1609, 1611 (Fed. Cir. 2002), quoting *Scaltech Inc. v. Retec/Tetra, L.L.C.*, 178 F.3d 1378, 1383, 51 U.S.P.Q.2d 1055, 1058 (Fed. Cir. 1999). See also, *Toro Co. v. Deere & Co.*, 355 F.3d 1313, 1319 (Fed. Cir.), *reh'g denied*, 2004 U.S. App. LEXIS 4125 (2004) ("First, the district court never expressly construed limitation (c) of the '168 patent. The analysis of anticipation should have begun by construing limitation (c), to guide the analysis of the allegedly anticipating prior-art reference.").

Applicants claim, A lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition for use in combination with a non reactive wetting agent having affinity to, the composition, said wetting agent being an alpha olefin copolymer, which copolymer is a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent nonreactive with but interactive to the pigmented composition.

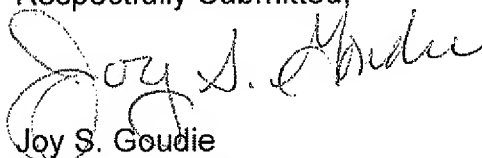
Dreschler claims, "[a] cosmetic composition for application to the lips which composition comprises: A) a mixture of: (1) an organosiloxane resin; and (2) a fluid diorganopolysiloxane polymer...(B) a volatile carrier."

Dreschler does not claim but discloses the different types of ingredients that may be found in the overcoat (topcoat) composition at column 11, lines 15-24, and Examples 1-10 spanning columns 11-15. The topcoats disclosed in Dreschler are sucrose polyesters, not the specific polymeric alpha olefins of Applicant's amended claims. The major ingredients are two different sucrose polyesters as found in Examples 1, 2, and 4), castor oil (Example 3), and two different sucrose esters of fatty acids (SEFA)(Examples 5-10). Nowhere does Dreschler suggest the use of polymeric alpha olefins as an overcoat ingredient.

By failing to disclose a topcoat (overcoat) made of polymeric alpha olefins, Drechsler does not meet all the limitations of the claims. This is what must be done for a reference to anticipate.

It is applicants position that the pending amended claims all contain limitations not found in Dreschler, and that the Examiner consider that this application is ready for allowance.

Respectfully Submitted,

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